

[Arizona Revised Statutes Annotated](#)

[Title 38. Public Officers and Employees \(Refs & Annos\)](#)

[Chapter 5. Social Security and Retirement](#)

[Article 4. Public Safety Personnel Retirement System \(Refs & Annos\)](#)

A.R.S. § 38-847

§ 38-847. Local boards

Effective: August 6, 2016

[Currentness](#)

A. The administration of the system and responsibility for making the provisions of the system effective for each employer are vested in a local board. The department of public safety, the Arizona game and fish department, the department of emergency and military affairs, the university of Arizona, Arizona state university, northern Arizona university, each county sheriff's office, each county attorney's office, each county parks department, each municipal fire department, each eligible fire district, each community college district, each municipal police department, the department of law, the department of liquor licenses and control, the Arizona department of agriculture, the Arizona state parks board, each Indian reservation police agency and each Indian reservation firefighting agency shall have a local board. A nonprofit corporation operating pursuant to §§ 28-8423 and 28-8424 shall have one local board for all of its members. Each local board shall be constituted as follows:

1. For political subdivisions or Indian tribes, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system, or the head's designee from among the other members of the merit system, if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the governing body of the city or the governing body of the employer. The appointed two citizens shall serve on both local boards in a city or Indian tribes where both fire and police department employees are members.

2. For state agencies and nonprofit corporations operating pursuant to §§ 28-8423 and 28-8424, two members elected by secret ballot by the members employed by the appropriate employer and three citizens appointed by the governor. Each state agency local board shall elect a chairman.

3. For fire districts, the chairperson of the fire district governing board or the chairperson's designee, two members elected by secret ballot by members employed by the fire district and two citizens appointed by the chairperson of the fire district governing board, one of whom is a resident of the fire district and one of whom has experience in personnel administration but who is not required to be a resident of the fire district.

4. For joint powers authorities organized pursuant to § 48-805.01, the joint powers authority board chairman or a designee

approved by the governing body, two members elected by secret ballot by members employed by the joint powers authority and two citizens, one of whom is a resident of one of the partner entities and one of whom has experience in personnel administration but who is not required to be a resident of a partner entity.

B. On the taking effect of this system for an employer, the appointments and elections of local board members shall take place with one elective and appointive local board member serving a term ending two years after the effective date of participation for the employer and other local board members serving a term ending four years after the effective date. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as previously provided.

C. Each local board shall be fully constituted pursuant to subsection A of this section within sixty days after the employer's effective date of participation in the system. If the deadline is not met, on the written request of any member who is covered by the local board or the employer to the board of trustees, the board of trustees may appoint all vacancies of the local board pursuant to subsection A of this section and designate whether each appointive position is for a two year or four year term. If the board of trustees cannot find individuals to serve on the local board who meet the requirements of subsection A of this section, the board of trustees may appoint individuals to serve as interim local board members until qualified individuals are appointed or elected. Each local board shall meet at least twice a year. Each member of a local board, within ten days after the member's appointment or election, shall take an oath of office that, so far as it devolves on the member, the member shall diligently and honestly administer the affairs of the local board and that the member shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the system.

D. Except as limited by subsection E of this section, a local board shall have such powers as may be necessary to discharge the following duties:

1. To decide all questions of eligibility for membership, service credits and benefits and determine the amount, manner and time of payment of any benefits under the system.

2. To prescribe procedures to be followed by claimants in filing applications for benefits.

3. To make a determination as to the right of any claimant to a benefit and to afford any claimant or the board of trustees, or both, a right to a rehearing on the original determination. Except as otherwise required by law, unless all parties involved in a matter presented to the local board for determination otherwise agree, the local board shall commence a hearing on the matter within ninety days after the date the matter is presented to the local board for determination. If a local board fails to commence a hearing as provided in this paragraph, on a matter presented to the local board for determination, the relief demanded by the party petitioning the local board is deemed granted and approved by the local board. The granting and approval of this relief is considered final and binding unless a timely request for rehearing or appeal is made as provided in this article, unless the board of trustees determines that granting the relief requested would violate the internal revenue code¹ or threaten to impair the system's status as a qualified plan under the internal revenue code. If the board of trustees determines that granting the requested relief would violate the internal revenue code or threaten to impair the system's status as a qualified plan, the board of trustees may refuse to grant the relief by issuing a written determination to the local board and the party petitioning the local board for relief. The decision by the board of trustees is subject to judicial review pursuant to title 12, chapter 7, article 6.²

4. To request and receive from the employers and from members such information as is necessary for the proper administration of the system and action on claims for eligibility for membership and benefits, and to forward such information to the board of trustees.

5. To distribute, in such manner as the local board determines to be appropriate, information explaining the system received from the board of trustees.

6. To furnish the employer, the board of trustees and the legislature, on request, with such annual reports with respect to the administration of the system as are reasonable and appropriate.

7. To receive and review the actuarial valuation of the system for its group of members.

8. To receive and review reports of the financial condition and of the receipts and disbursements of the fund from the board of trustees.

9. To appoint medical boards as provided in [§ 38-859](#).

10. To sue and be sued to effectuate the duties and responsibilities set forth in this article.

E. A local board shall have no power to add to, subtract from, modify or waive any of the terms of the system, change or add to any benefits provided by the system or waive or fail to apply any requirement of eligibility for membership or benefits under the system. Notwithstanding any limitations periods imposed in this article, including subsection D, paragraph 3 and subsections G and H of this section, if the board of trustees determines a local board decision violates the internal revenue code or threatens to impair the system's status as a qualified plan under the internal revenue code, the local board's decision is not final and binding and the board of trustees may refrain from implementing or complying with the local board decision.

F. A local board, from time to time, shall establish and adopt such rules as it deems necessary or desirable for its administration. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances. If a claim or dispute is presented to a local board for determination but the local board has not yet adopted uniform rules of procedure for adjudication of the claim or dispute, the local board shall adopt and use the model uniform rules of local board procedure that are issued by the board of trustees' fiduciary counsel to adjudicate the claim or dispute.

G. Except as otherwise provided in this article, any action by a majority vote of the members of a local board that is not inconsistent with the provisions of the system and the internal revenue code shall be final, conclusive and binding on all persons affected by it unless a timely application for a rehearing or appeal is filed as provided in this article. No later than twenty days after taking action, the local board shall submit to the board of trustees the minutes from the local board meeting that include the name of the member affected by its decision, a description of the action taken and an explanation of the reasons and all documents submitted to the local board for the action taken, including the reports of a medical board. The

board of trustees may not implement and comply with any local board action that does not comply with the internal revenue code or that threatens to jeopardize the system's status as a qualified plan under the internal revenue code.

H. A claimant or the board of trustees may apply for a rehearing before the local board within the time periods prescribed in this subsection, except that if a decision of a local board violates the internal revenue code or threatens to jeopardize the system's status as a qualified plan under the internal revenue code, no limitation period for the board of trustees to seek a rehearing of a local board decision applies. An application for a rehearing shall be filed in writing with a member of the local board or its secretary within sixty days after:

1. The applicant-claimant receives notification of the local board's original action by certified mail, by attending the meeting at which the action is taken or by receiving benefits from the system pursuant to the local board's original action, whichever occurs first.

2. The applicant-board of trustees receives notification of the local board's original action as prescribed by subsection G of this section by certified mail.

I. A hearing before a local board on a matter remanded from the superior court is not subject to a rehearing before the local board.

J. Decisions of local boards are subject to judicial review pursuant to title 12, chapter 7, article 6.

K. When making a ruling, determination or calculation, the local board shall be entitled to rely on information furnished by the employer, a medical board, the board of trustees, independent legal counsel or the actuary for the system.

L. Each member of a local board is entitled to one vote. A majority is necessary for a decision by the members of a local board at any meeting of the local board.

M. The local board shall adopt such bylaws as it deems desirable. The local board shall elect a secretary who may, but need not, be a member of the local board. The secretary of the local board shall keep a record and prepare minutes of all meetings in compliance with chapter 3, article 3.1 of this title³ and forward the minutes and all necessary communications to the board of trustees as prescribed by subsection G of this section.

N. The fees of the medical board and of the local board's independent legal counsel and all other expenses of the local board necessary for the administration of the system shall be paid by the employer and not the board of trustees or system at such rates and in such amounts as the local board shall approve. Legal counsel that is employed by the local board is independent of the employer and any employee organization or member and owes its duty of loyalty only to the local board in connection with its representation of the local board.

O. The local board shall issue directions to the board of trustees concerning all benefits that are to be paid from the employer's account pursuant to the provisions of the fund. The local board shall keep on file, in such manner as it may deem convenient or proper, all reports from the board of trustees and the actuary.

P. The local board and the individual members of the local board shall be indemnified from the assets of the employer for any judgment against the local board or its members, including attorney fees and costs, arising from any act, or failure to act, made in good faith pursuant to the provisions of the system, including expenses reasonably incurred in the defense of any claim relating to the act or failure to act.

Credits

Added by Laws 1968, Ch. 85, § 1. Amended by Laws 1970, Ch. 211, § 9; Laws 1972, Ch. 163, § 40; Laws 1980, Ch. 146, § 5; Laws 1982, Ch. 4, § 1; Laws 1982, Ch. 111, § 1; Laws 1983, Ch. 300, § 12; Laws 1986, Ch. 88, § 2; Laws 1988, Ch. 19, § 4, eff. March 31, 1988; Laws 1989, Ch. 197, § 2; Laws 1990, Ch. 411, § 3; Laws 1992, Ch. 340, § 1; Laws 1992, Ch. 341, § 3; Laws 1994, Ch. 130, § 2; Laws 1995, Ch. 205, § 6; Laws 1997, Ch. 1, § 427, eff. Oct. 1, 1997; Laws 1997, Ch. 239, § 13; Laws 1999, Ch. 327, § 24; Laws 2000, Ch. 329, § 2; Laws 2001, Ch. 353, § 3; Laws 2008, Ch. 59, § 1; Laws 2010, Ch. 118, § 7; Laws 2010, Ch. 200, § 41, eff. April 28, 2010; Laws 2011, Ch. 27, § 26; Laws 2011, Ch. 347, § 4; Laws 2012, Ch. 136, § 7; Laws 2013, Ch. 203, § 7; Laws 2013, Ch. 216, § 5; Laws 2016, Ch. 323, § 2.

Footnotes

¹ Internal Revenue Code sections may be found in Title 26 of U.S.C.A.

² Section 12-901 et seq.

³ Section 38-431 et seq.

A. R. S. § 38-847, AZ ST § 38-847

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

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Notes Of Decisions (14)

Local boards

Local boards - In general

Responsibility for determining whether a member's employment during disability is for primary purpose of rehabilitation rests upon local retirement board of the member under § 38-847. Op.Atty.Gen. No. 70-10.

Local boards - Reemployment

Fund manager of public safety personnel retirement system must immediately inform local board under which benefits originated of any benefit payments which the fund manager thinks are being improperly continued during the reemployment of a retired member, such notification will afford local board the opportunity to correct the matter, and fund manager could then proceed to recover any wrongfully paid benefits. Op.Atty.Gen. No. 177-237, [1977 WL 22161](#).

Reemployment, local boards

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Department of public safety board

The governor is authorized to appoint three members to the department of public safety board at his discretion. Op.Atty.Gen. No. 180-78, [1980 WL 88476](#).

Eligibility

Drug control district special agents who joined the public safety personnel retirement system prior to August 27, 1977 were entitled to participate in the system, but whether post-August 27, 1977 district employee should continue in the system was a question left to the local board's judgment. Op.Atty.Gen. No. 180-191, [1980 WL 28072](#).

Arizona drug control district special agents who joined the public safety personnel retirement system between 1975 and 1977 would be entitled to participate in the system, and the appropriate local retirement board would have authority to determine whether district employees who joined the system between 1977 and 1980 were eligible to participate in the system or should have been covered under the state retirement plan, but district employees hired after July 31, 1980, would not be entitled to participate in the system. Op.Atty.Gen. No. 180-191, [1980 WL 28072](#).

Election of benefits

Public employer who, prior to his retirement, has worked under several systems, including public safety personnel retirement system, has right to elect benefits under one specific system under which he has worked, and all his benefits and his widow's benefits would then be computed under the specific system elected. Op.Atty.Gen. No. 69-8.

Disability board of appeals

Public safety personnel retirement system disability board of appeals did not have jurisdiction under § 38-847.01 (repealed, see, now, this section) to hear questions of whether or not employee was eligible for benefits; all disability board was empowered to decide was whether local board was correct in determining that applicant for benefits was or was not disabled under law, and if so, nature, extent, cause, and type of disability. [Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Bd.](#) (App. Div.2 1983) 137 Ariz. 536, 672 P.2d 201. [Public Employment](#) 483

Membership

Local police board had no power to find that employee who had withdrawn his contributions from public safety personnel retirement system could still be member entitled to benefits under system, in that local board had no power to modify or extend statutory system. [Fund Manager, Public Safety Personnel Retirement System v. Tucson Police and Fire Public Safety Personnel Retirement Systems Bd.](#) (App. Div.2 1985) 147 Ariz. 1, 708 P.2d 92. [Municipal Corporations](#) 187(4); [Public Employment](#) 393

A retired employee of the Game and Fish Department is not a member of the Public Safety Personnel Retirement System and, therefore, is not eligible to seek election to the Local Public Safety Retirement Board. Op.Atty.Gen. No. 188-099, 1988 WL 249674.

Indemnification

Use of words "in good faith pursuant to the provisions of the system" in subsection of this section providing for indemnification of local retirement boards by state retirement fund expressly establishes indemnification for honest mistakes in performance of adjudicative and administrative responsibilities. [Fund Manager, Public Safety Personnel Retirement System v. Department of Public Safety Local Retirement Bd.](#) (App. Div.1 1988) 157 Ariz. 324, 757 P.2d 128. [Municipal Corporations](#) 163; [Public Employment](#) 365

Local retirement board acted pursuant to subsection of this section when it granted disability benefits to injured police officer and when it later affirmed that decision upon administrative review and, therefore, board made those decisions in good faith, so that state retirement fund would have to indemnify board for all resulting liabilities, including trial court's award of attorney fees and costs to state retirement fund. [Fund Manager, Public Safety Personnel Retirement System v. Department of Public Safety Local Retirement Bd.](#) (App. Div.1 1988) 157 Ariz. 324, 757 P.2d 128. [Municipal Corporations](#) 187(8.1); [Public Employment](#) 404

Transfer between systems

Since no hearing or proceeding had been instituted, transfer order of fund manager of public safety personnel retirement system, which moved University of Arizona security guards from its system to Arizona State Retirement System, was not a "decision" as to which University regents were required to comply with time and manner review requirements before filing for special action. [Arizona Bd. of Regents for and on Behalf of University of Arizona v. State ex rel. State of Ariz. Public Safety Retirement Fund Manager Adm'r](#) (App. Div.1 1989) 160 Ariz. 150, 771 P.2d 880. [Education](#) 1122(1); [Public Employment](#) 544

Res judicata

Manager of public safety personnel retirement system fund was not barred by doctrine of res judicata from seeking relief from order of disability of board of appeals granting accidental disability pension to applicant whose eligibility was in

question, since court which had dismissed earlier action for lack of jurisdiction did not decide issue of applicant's eligibility, but instead had found that fund manager had not exhausted his administrative remedies by asking local board for rehearing. [Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Bd.](#) (App. Div.2 1983) 137 Ariz. 536, 672 P.2d 201 . Judgment 715(3)

Review

Powers of police public safety personnel retirement system board did not include power to set aside reasons for police officer's termination, but termination and reasons for termination could be attacked only by appeal to civil service commission. [Leschinsky v. Public Safety Personnel Retirement System](#) (App. Div.2 1976) 27 Ariz.App. 618, 557 P.2d 550 . [Municipal Corporations 185\(12\)](#); [Municipal Corporations 187\(1\)](#); [Public Employment 382](#); [Public Employment 539](#)

Context and Analysis (2)

Cross References (2)

Department of public safety, see [§ 41-1711 et seq.](#)

Universities and colleges, see [§ 15-1601 et seq.](#)

Validity

There are no Validity results for this citation.